Briefing on the draft decree on Regulations on the organization, operation and management of association

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Background

1. On 29/7/2022, Ministry of Home Affairs published a draft of the decree[1] on Regulations on the organization, operation and management of associations, attached with a submission which explained the rationales and process of drafting of the decree, as well as major proposals in the draft.[2] MOHA is collecting feedbacks and comments on the draft (known as 6th draft) before submitting it for the Prime Minister' signature. Its public consultation at MOHA's website is available until 29/9/2022.
2. This decree, once promulgated, would replace the Decree No. 45/2010/NĐ-CP dated 21st April 2010 of the Government on organizational structure, activities and management of associations and the Decree No. 33/2012/NĐ-CP dated 13th April 2012 of the Government on amendment and supplement of several articles of the Decree No. 45/2010/NĐ-CP.
3. Drafters of the document explained in the submission note that the new draft (comparing to another draft presented in 2018) aimed to reflect Conclusion No.102-KL/TW of the Politburo and Notice No. 158-TB/TW dated 02/01/2020 of the Secretariat on continuing the implementation of Conclusion 102. Among those principles guiding the drafting of the decree quoted the constitutional right of freedom of association in the Constitution 2013 and international conventions that Vietnam is a party of.[3]

Previous recommendations on freedom of association by international bodies of human rights and commitment of the government.

4. Vietnam is a member of the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the International Convention on the Rights of Persons with Disabilities, and committed to ratify the ILO Convention No.87 on Freedom of Association.
5. Vietnam received several recommendations from United National Human Rights Treaty Bodies on freedom association. Notably those recommendations by the Human

[1] In the Vietnamese legal system, a decree is issued by the Government to give detail interpretation of provisions provided in a promulgated law

[2] These documents are published at MOHA's website at https://moha.gov.vn/van-ban-du-thao.html and also available at a number of websites of legal documents in Vietnamese language.

[3] Page 02, submission note of the draft decree by MOHA

Rights Committee (2019), in which the Committee repeatedly "concerned about undue restrictions on the establishment, management and operation of public associations, including the right to form independent trade unions. The Committee is particularly concerned of restrictive regulations on foreign funding, which can be used to tighten control over associations and limit their ability to receive such funds". The Committee recommended that "the State party should give full effect to the constitutional guarantee of freedom of association, and expedite the adoption of the Law on Association and ensure that its provisions, relevant regulations and practices are in conformity with article 22 of the Covenant. It should: (a) respect individuals' right to form or join a union or an association of their choice including in the field of human rights; (b) ensure that regulations governing foreign funding for associations do not lead to undue control or interference on their ability to operate effectively."[4] In addition, the Committee on the Rights of the Child (CRC) "noted with serious concerns that "in practice children's freedom to association is severely restricted" and it recommended Vietnam "to amend its legislation .. in order to establish a genuine and real freedom of association which is necessary for children".[5]

6. The Special Rapporteur on Freedom of Religions or Believes also recommended that Viet Nam should reforms the law of associations, "so that religious or belief communities [..] should have efficient access to an alternative form of legal personality status, which they may need to undertake important community functions".[6]
7. At the Universal Periodic Review (UPR), Vietnam received 14 recommendations on improvement of freedom of association. These recommendations came from France (2019 and 2014); Netherlands (2019); Belgium (2019); Luxembourg (2019); Canada (2019); Italy (2019 and 2014); Spain (2019); Switzerland (2019); Czechia (2019); Lithuania (2014); Poland (2014); and Norway (2009); Among these recommendations, Viet Nam pledged to support key recommendations to created "favorable conditions to the realization of freedom of association" (recommendation by Poland, 2014); "Take all necessary action to respect and promote the right to freedom of expression" (Lithuania, 2014); "Further implement measures aimed at promoting freedom of.. association in line with the most advanced international standards (Italy, 2014); "create an enabling environment for independent civil society and ensure that the law on association facilitates the registration, work and funding of NGOs free from undue State interference and restrictions (Czechia, 2019).
8. On December 10th 2021, two UN Special Rapporteurs on Freedom of Peaceful Assembly and Association, Freedom of Opinion and Expression, Human Rights

[4] Human Rights Committee. Concluding Observation on the third periodic report of Viet Nam. CCPR/C/VNM/CO/3 Para 49 – 50.

[5] Committee on the Rights of the Child. Concluding Observation on the 3-4 periodic report of Vietnam. 2012. CRC/C/VNM/CO/3-4 para. 41, 42

[6] UN Special Rapporteur on Freedom of Religions or Believes. 2015. Report of Country visit to Viet Nam. A/HRC/28/66/Add.2 Para (g)

Defenders sent a letter to the Vietnamese Government in which Special Rapporteurs conveyed their serious concerns on restrictions of civil society organizations' activities. The letter specifically pointed out Decree 45/2010 which provided restriction on the operational purposes of the organization, among several restrictions provided by a wide range of decrees and decisions of the Government while a Law on Association has been pending for the last 20 years.[7]

Restrictions on Freedom of Association introduced in the 6th draft of the decree

Territory-based restrictions:[8]

9. **Article 4** provided four levels of scopes of operation for associations: those operate at national or inter-provincial, provincial, district and commune levels. Following this territory-based categories, **Article 13.6** requires the following to registering an association; "a sufficient number of Vietnamese citizens and organizations registering to join the establishment of the association" – this is outlined as 100 individuals or organizations at the national level; 50 at the provincial level; 20 at the district level and 10 at the communal level. This requirement, on the one-hand leads to direct responsibility of respective authorities in the administrative system to handle the registration of an association. On the other hand, it results in restrictions to the freedom to association. **Article 26.1** places restrictions on one's ability to associate with an association that is registered to operate in another province, or district or commune and effectively prevents a person to associate with others freely. As per **Article 31**, an association that is registered nationally or inter-provincially is only allowed to operate in a province (and have a representative office) only with approval of a provincial authority, after providing justification or an explanation of necessity, thus limiting opportunity to associate freely.
10. **Article 25.15** on the rights of associations only grants the right to "join relevant international organizations and sign and implement international agreements" only to those associations registered as national or inter-provincial organizations, thus limiting the ability to associate to within Vietnamese territorial boarders.

Types and areas of activities

11. The draft introduces a new provision on the prohibited acts of associations under **Article 11**. The six categories of prohibitions are as follows: Category 1 – Undermining the reputation of the State, agencies, organizations, individuals and

[7] OL VNM 7/2021 from Mandates of the Special Rapporteur on the right to freedom of peaceful assembly and association and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

[8] These requirements already existed in Decree No.45.

communities; harming national interests, security, national defense, the great national unity bloc, and causing political insecurity and social order insecurity; Category 2 – Infringing upon the legitimate rights and interests of the State, communities, organizations and individuals; Category 3 – Infringing upon social morality, decencies, fine customs, traditions, and national cultural identity and 4 – Conducting money laundering, terrorism sponsorship, and any activities contrary to the Party's orientation and guidelines, the State's policies and laws; Category 5 – Forging, erasing, transferring, leasing, lending, pledging, and mortgaging the association's establishment license or its charter and category 6 – Disturbing the domestic market.

12. Drafters did not explain in their submission note: (i) if those categories provided clearly in existing law on associations 1957; (ii) how and whether the listed categories met the test to limit Constitutionally protected rights as per Article 14.2 and those principles of the ICCPR.
13. Categories 1, 2, 3, 4, and 6 are not adequately defined. Among the prohibited acts of associations listed, of particularly concerns are Categories 2 (Infringing upon the legitimate rights and interests of the State, communities, organizations and individuals) and 4 ("any activities contrary to the Party's orientation and guidelines, the State's policies and laws"), which also restricts the freedom of expression of an associations and its members and infringes upon an associations' and its members' right to participate in public affairs.

Number of members

14. **Article 13.6** prescribes that to register an association "a sufficient number of Vietnamese citizens and organizations registering to join the establishment of the association" – 100 individuals or organizations at the national level; 50 at the provincial level; 20 at the district level and 10 at the communal level.
15. As per **Article 37(g);** "a competent state authority" will may make a decision to dissolve an association which it deems does not have enough members. Notably the required number of persons to exercise their right to association collectively in other countries is two, five, or seven.

An association cannot be registered if another association with similar purposes has been registered previously in their geographical area.

16. This arbitrary restriction, which existed in Decree 45 (Article 5.1), has been carried forward to 6th draft (**Article 13.2**). It blatantly prevents persons to freely exercise their right to freedom of association, including to form their own association and restricting association with existing groups. Because of this restriction, in practice for instance, a group of people with disabilities could not form their own association and should they wish to associated with other people with disabilities will be requested to join an existing association of people with disabilities.

Administrative burden on the registration of an association hampering the freedom of association

17. In addition to the minimum number of members, prohibited acts of an association, limitations on registration of associations with similar purposes of existing associations and geographic limitations to associations, the draft outlines a two-step approval process for the forming and registration of associations: **Article 14 and 15** require the establishment of a "mobilization board" as a prior step to organizing, which is subjected to approval by competent authorities from at least a district level. This board legally exists for one year. This is the legal entity that can operate to prepare for the establishment of the association.
18. **Article 24** provides minimum criteria chair of an association and is discriminatory on the basis of political opinion, of health and social status. This article also provides a required pre-approval of candidates of leaders by state authorities, including specific approval by the police (para 3(a) and (b).

Other conditions or interference in the operation of associations

19. As per article 37, an association may be dissolved due to a serious violation of the law, which is not adequately defined. However, an association may also be dissolved should it fail to follow administrative orders on two occasions. The arbitrary nature under which an association may be dissolved by the state could lead to state interference.